



# COMMONWEALTH of VIRGINIA

Department Of  
Mental Health, Mental Retardation and Substance Abuse Services

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## MEMORANDUM

**TO:** All Providers Licensed, Funded or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services

**FROM:** Richard E. Kellogg *Richard E. Kellogg*

**RE:** Schedule for Measuring Initial Compliance with the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services*, 12 VAC 35-115

**DATE:** October 9, 2001

A final 30-day adoption period for the *Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers of Mental Health, Mental Retardation and Substance Abuse Services*, 12 VAC 35-115 ("Regulations") is scheduled to begin October 22, 2001 by publication in the *Virginia Register*. **We expect the effective date of the Regulations to be November 21, 2001.** Although all providers will be accountable for adherence to the new *Regulations* beginning that day, the Department recognizes that providers will need time to become knowledgeable about and implement all aspects of the new requirements. Therefore, this memorandum is intended to provide guidance on how the Department will measure compliance with the new *Regulations* from November 21, 2001 until July 1, 2002.

The measurement of overall compliance with the *Regulations* will follow the schedule set forth below. Please note, however, that all complaints alleging violations of the *Regulations*, including allegations of abuse and neglect, will be investigated and resolved in accordance with the new *Regulations* as of November 21, 2001.

### Measurement of Compliance with the New Regulations

The Department's Offices of Human Rights (OHR) and Licensing (OL) will use the following criteria to measure initial compliance with the policy and procedure, variance, exemption, and Local Human Rights Committee (LHRC) requirements of the new *Regulations*.

## **POLICIES AND PROCEDURES**

**If your organization has a Human Rights Plan that has been approved by the State Human Rights Committee (SHRC) or a human rights advocate prior to November 21, 2001,** your organization's policies and procedures will be monitored for compliance with the *Regulations* in the following manner:

- From November 21, 2001 until March 1, 2002, policies and procedures will be considered to be in compliance with the new *Regulations* if your organization has a human rights plan that was approved by the SHRC or a human rights advocate prior to November 21, 2001.
- Beginning March 1, 2002, you must have submitted policies and procedures, revised in accordance with the new *Regulations*, to the human rights advocate for review and comment.
- Beginning July 1, 2002, you must have policies and procedures that have been reviewed and commented on by the human rights advocate as consistent with the new *Regulations*, and you must have submitted them to your organization's LHRC.

**If your organization does not have a Human Rights Plan that has been approved by the SHRC or a human rights advocate prior to November 21, 2001,** your organization's policies and procedures will be monitored for compliance with the *Regulations* in the following manner:

- **If you are a provider that submits an application for a DMHMRSAS license before October 21, 2001,** you may submit to the OHR no later than November 21, 2001, policies and procedures that comply with the current human rights regulations, instead of the new *Regulations*. The OHR and the OL will consider these policies and procedures to be in compliance for the purpose of issuance of a license if they are approved by the State Human Rights Director.
- **If you are a provider that: a) submits an application for a DMHMRSAS license on or after October 21, 2001; or b) has not submitted policies and procedures under the current regulations prior to November 21, 2001,** your organization must submit policies and procedures to comply with the new *Regulations* in order to be issued a license. These policies and procedures will be reviewed for compliance and commented on within 30 days of receipt by the human rights advocate as consistent with the new *Regulations*. You must also submit these policies and procedures to your organization's LHRC as soon as the advocate review is completed. The LHRC's review will not delay the issuance of the licenses.

After November 21, 2001, new providers must submit policies and procedures to comply with the new *Regulations* in order to be issued a license. These policies and procedures will be reviewed for compliance and commented on by the human rights advocate within 30 days of receipt.

**If your organization is a private psychiatric hospital or a psychiatric unit in a private hospital, and you currently have a Human Rights Plan for any program within your hospital that was approved by the SHRC prior to November 21, 2001,** your organization's policies and procedures will be monitored for compliance with the *Regulations* in the following manner:

- From November 21, 2001 until March 1, 2002, the OHR and OL will consider your organization's policies to be in compliance with the new *Regulations* if you 1) display in the psychiatric inpatient unit a DMHMRSAS human rights poster that contains the name and telephone number of the human rights advocate, and 2) agree to allow inpatients to use the existing complaint procedure and existing LHRC.
- Beginning March 1, 2002, you must have submitted policies and procedures revised in accordance with the new human rights *Regulations* to the human rights advocate for review.
- Beginning July 1, 2002, you must have policies and procedures that have been reviewed and commented on by the human rights advocate as consistent with the new regulations, and these must have been submitted to your organization's LHRC.

**If your organization is a private psychiatric hospital that does not have an approved Human Rights Plan for any service within your hospital,** your organization's policies and procedures will be monitored for compliance with the *Regulations* in the following manner:

- By November 21, 2001, you must develop policies and procedures consistent with the new human rights *Regulations* and submit them to the human rights advocate for review.
- By December 21, 2001, the human rights advocate will review and comment on your policies and procedures as consistent with the regulations. Compliance will be based on the successful completion of this review.
- You must submit these policies and procedures to the LHRC upon establishment or affiliation.

**If your organization is a facility operated by this Department,** your facility's policies and procedures will be monitored for compliance with the new *Regulations* in the following manner:

- From November 21, 2001 until March 1, 2002, the OHR will consider your policies and procedures to be in compliance with the new *Regulations* if you have human rights policies and procedures that were approved by the LHRC or the advocate prior to November 21, 2001.
- Beginning March 1, 2002, you must have submitted policies and procedures revised in accordance with the new *Regulations* to the human rights advocate for review.
- Beginning July 1, 2002, you must have policies and procedures that have been reviewed and commented on by the human rights advocate as consistent with the new *Regulations*, and you must have submitted them to your organization's LHRC.

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**If your organization is a provider that is funded, but not licensed or operated, by the Department (including consumer-managed programs)**, your organization's policies and procedures will be monitored for compliance with the new *Regulations* in the following manner:

- From November 21, 2001 until March 1, 2002, you must either have an approved Human Rights Plan or display a DMHMRSAS human rights poster that includes the name and telephone number of the human rights advocate.
- Beginning March 1, 2002, you must have submitted policies and procedures, revised in accordance with the new *Regulations*, to the human rights advocate for review.
- Beginning July 1, 2002, you must have policies and procedures that have been reviewed and commented on by the human rights advocate as consistent with the new regulations, and you must have submitted them submitted to your organization's LHRC.

### **LOCAL HUMAN RIGHTS COMMITTEES**

**As a provider, you must either establish or be affiliated with a Local Human Rights Committee (LHRC).** The Department will use the following criteria to monitor compliance with this aspect of the regulations:

- **If you have been required to have an LHRC under the current regulations**, you must continue to have an LHRC effective November 21, 2001.
- **If you have not been required to have an LHRC under the current regulations**, from November 21, 2001 to February 21, 2002, you will be considered in compliance if you have a plan for establishing or pursuing affiliation with an LHRC. You will have until February 21, 2002, to complete the establishment or affiliation with an LHRC. **NOTE:** If a complaint is filed by an individual receiving services prior to an LHRC becoming available to your organization, the State Human Rights Committee (SHRC) will determine how, when and where the case will be heard. The SHRC may call upon another LHRC to hear the complaint.

In order to facilitate LHRC affiliations for the new providers, the SHRC will provide information about LHRCs that are willing to take new providers and can make LHRC affiliation assignments if necessary.

### **VARIANCES AND EXEMPTIONS**

**As of November 21, 2001, all variances and exemptions to the current regulations are effectively repealed.** Requests to continue existing variances and exemptions to the new *Regulations* must be resubmitted according to the procedures in the new *Regulations*. (These procedures are attached.) I caution you to be proactive in preparing documentation justifying the

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need for a variance or exemption to the *Regulations*. The Department will use the following criteria to monitor compliance with this aspect of the regulations.

**If your organization holds an approved variance to the current regulations and you wish to have the variance continued, or if you determine that a current practice within your organization is in conflict with the new *Regulations* you must apply immediately for a variance.** You will have 120 days from November 21, 2001, to complete this process. During this time, you will be considered in compliance with the new *Regulations* if you have a plan in place for pursuing the variance within 120 days.

All providers holding variances under the current regulations were notified in my July 18, 2001 memorandum regarding "Status of Existing Human Rights Variances Under the New Regulation." This memorandum also provided information about the type of variance in effect for each provider. Please review this memorandum for additional information.

**If your organization holds an exemption to the current regulations, you must reapply for the exemption under the new *Regulations*.** All exemptions based on the current regulations will be deemed void on the day the new regulations become final.

### **GENERAL GUIDANCE**

We advise you to develop a listing or grouping of all of your organization's human rights policies and procedures so they can be readily available to licensing and human rights staff, LHRCs, SHRCs, consumers and family members. You are also advised to develop policies and procedures that address, at a minimum, each section of the new *Regulations*. The responsibility for the development of these policies and procedures rests, of course, solely with you as a provider; however, minimal consultation is available from Department staff.

The Department is developing guidance relevant to several regulatory provisions. For example, the Office of Human Rights will distribute a seclusion and restraint matrix by November 21, 2001. This matrix will be used by Department staff for monitoring policies. It also can be used by LHRCs, the SHRC, providers and others. The Department will also develop a "side-by-side" comparison of the new *Regulations* to the three current sets of regulations.

The SHRC has indicated that it will invite new providers to appear before the SHRC to describe the program and review human rights.

I hope this information is helpful to you. Should there be any change in the effective date of the regulations, you will be notified immediately.

Thank you for your attention to compliance issues.

REK/ibs

Attachments

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pc: Virginia Dofflemeyer, Chair  
State MHMRSAS Board  
Members, State MHMRSAS Board  
James Harper, Co-Chair, SHRC  
Peter McIntosh, Co-Chair, SHRC  
Members, SHRC  
Margaret Walsh  
James Morris, Ph.D.  
Gregory Stolcis  
James Reinhard, M.D.  
James Evans, M.D.  
Arne Owens

Julie Stanley, J.D.  
Joy Yeh, Ph.D.  
Martha Mead  
Paul Gilding  
Charline Davidson  
Martha Adams  
James Martinez  
Charleen Whitehead  
Robert L. Johnson  
Jane D. Hickey  
Dana Martin-Johnson  
Lynne Fleming